



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

Docket Number USCG-2016-0541

RIN 1625-AA08

Special Local Regulation; Allegheny River Mile 0.0-1.5; Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for all waters of the Allegheny River mile 0.0-1.5. This special local regulation is necessary to provide safety for the participants in the “Pittsburgh Triathlon and Adventure Race” marine event. This rulemaking prohibits persons and vessels from being in the special local regulated area unless authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective from 6 a.m. on August 13, 2016, through 9 a.m. on August 14, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0541 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412-221-0807, e-mail Jennifer.L.Haggins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

This annually recurring event and special local regulation is currently listed as the “Friends of the Riverfront Inc./Pittsburgh Triathlon and Adventure Races” under 33 CFR 100.801, Table 1, line no. 21, scheduled for two days during the last two weekends in July or first weekend of August. This year the event sponsor changed the date to the second weekend of August, and informed the Coast Guard of this date change on June 6. The event will consist of at least 400 swimmers and takes place on the Allegheny River. This temporary final rule reflects the date changes to the event. The Captain of the Port Pittsburgh (COTP) has determined that the special local regulation under 33 CFR 100.801 is still necessary to protect participants, spectators, and waterway users during this event.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” It is impracticable to publish an NPRM because we must establish this special local regulation by August 13, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to establish a special local regulation to protect participants of the “Pittsburgh Triathlon and Adventure Race” beginning on August 13, 2016 to August 14, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Pittsburgh (COTP) has determined the need to protect participants during the “Pittsburgh Triathlon and Adventure Race” from 6 a.m. to 9 a.m. on August 13, 2016 and August 14, 2016. This rule is needed to protect personnel, vessels, and these navigable waters before, during, and after the scheduled event.

IV. Discussion of the Rule

The Captain of the Port Pittsburgh is establishing this special local regulated area from 6 a.m. to 9 a.m. on August 13, 2016 and August 14, 2016 for all waters of the Allegheny River mile 0.0-1.5. The duration of the special local regulated area is intended to ensure the safety of vessels, participants, spectators and other waterway users before, during, and after the scheduled event. No vessel or person is permitted to enter the special local regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are establishing appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulated area.

This special local regulation restricts transit on the Allegheny River from mile 0.0-1.5 for a short duration of 3 hours each day. Vessel traffic will be informed about the special local regulated area through local notices to mariners. Moreover, the Coast Guard will issue Broadcast Notices to Mariners via VHF-FM marine channel 16 about the area and the rule allows vessels to seek permission to transit the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulated area may be small entities, for the reasons stated in section V.A above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is

consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves special local regulated area that would prohibit entry to unauthorized vessels. It is categorically excluded from further

review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERWAYS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.35T08-0541 to read as follows:

§ 100.35T08-0541 Special Local Regulation; Allegheny River Mile 0.0 to 1.5, Pittsburgh, PA.

(a) **Location.** All waters of the Allegheny River beginning at mile marker 0.0 and ending at mile marker 1.5 at Pittsburgh, PA.

(b) **Periods of Enforcement.** This rule will be enforced from 6 a.m. to 9 a.m. on August 13, 2016 and August 14, 2016. The COTP or a designated representative will inform the public

through broadcast notice to mariners of the enforcement period for the special local regulation.

(c) Regulations. (1) In accordance with the general regulations in §100.801 of this part, entry into this area is prohibited unless authorized by the COTP or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the COTP or a designated representative. The COTP representative may be contacted at 412-221-0807.

L. MCCLAIN, JR.,
Commander, U.S. Coast Guard
Captain of the Port Pittsburgh

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